

STATE OF SOUTH CAROLINA

(Caption of Case)

Leslie and Mark Hendrix,

Complainant/Petitioner

v.

Utilities Services of South Carolina, Inc.

Defendant/Respondent.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2009 - 102 - W

(Please type or print)

Submitted by: John M. S. Hoefer

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☒ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input checked="" type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

WILLOUGHBY & HOEFER, P.A.

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*ALSO ADMITTED IN TX

July 23, 2009

VIA HAND DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator

Public Service Commission of South Carolina

Post Office Box 11649

Columbia, South Carolina 29211

RECEIVED
JUL 23 11 01
PUBLIC SERVICE
COMMISSION

RE: Leslie and Mark Hendrix, Complainant/Petitioner v. Utilities Services of South Carolina, Inc., Defendant/ Respondent. Docket No.: 2009-102-W

Dear Mr. Terreni:

Enclosed for filing on its behalf of Utilities Services of South Carolina, Inc. ("USSC") are the original and one (1) copy of Defendant's Motion to Strike in the above-referenced matter. By copy of this letter, I am serving a copy of these documents upon the parties of record and enclose a Certificate of Service to that effect.

I would appreciate your acknowledging receipt of these documents by date-stamping the extra copy that is enclosed and returning the same to me in the self addressed enveloped enclosed.

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/ccm
Enclosures

cc: Jeffrey M. Nelson, Esquire
Leslie and Mark Hendrix

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-102-W

RECEIVED
PUBLIC SERVICE
COMMISSION
JUL 27 2009

IN RE:)
)
Leslie and Mark Hendrix,)
)
Complainants/Petitioners,)
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v.)
)
Utilities Services of South Carolina, Inc.,)
Defendant/Respondent)
_____)

MOTION TO STRIKE

Pursuant to 26 S.C. Code Ann. Regs. 103-829 and applicable South Carolina law, Utilities Services of South Carolina, Inc. ("USSC" or the "Company") hereby moves the Public Service Commission of South Carolina ("Commission") to strike portions of the prefiled rebuttal testimony of complainant. In support thereof, the Company would show as follows:

1. Complainant initiated this action by filing a complaint with the Commission on or about February 27, 2009. On or about July 20, 2009, complainant submitted revised prefiled rebuttal testimony. Therein, complainant included her own proposed testimony as well as the testimony of Ms. Kim Plowden and Mr. John Fischer.

2. The rebuttal testimony of complainant references alleged "mainline breaks" during the week of July 6, 2009 as well as alleged instances of excess pressure experienced by other customers of USSC. See Complainant Prefiled Rebuttal Testimony, Hendrix, p. 2; Plowden, pp. 1-2; Fischer, p. 1. These allegations are not relevant to complainant's property or service account and

were not raised as a cause of action in the original or the amended complaint filed in this matter. Furthermore, these issues were not raised by either the Company or ORS in their responsive direct testimony. See USSC Prefiled Direct Testimony, ORS Prefiled Direct Testimony.

3. Additionally, complainant's rebuttal testimony addresses issues relating to a repair policy offered by Home Service USA Repair Management Corp., requests that the Commission disallow for profit corporations to operate public utilities in South Carolina, asserts a claim for additional plumbing damages, and alleges USSC failed to provide a boil water advisory relating to a main break. See Complainant Prefiled Rebuttal Testimony, Hendrix, p. 2-7. These issues raised in complainant's rebuttal testimony were not raised in either the original or the amended complaint. Furthermore, these issues were not raised by either the Company or ORS in their responsive direct testimony. See USSC Prefiled Direct Testimony, ORS Prefiled Direct Testimony.

4. The above-referenced portions of rebuttal testimony offered by complainant are inadmissible as evidence in this proceeding inasmuch as they are unrelated to service provided by USSC to complainant or to complainant's service account. Additionally, these issues were not addressed in and are not relevant to the instant complaint. Commission Rule 103-846 (A) provides that, "[i]rrelevant, immaterial or unduly repetitious evidence shall be excluded." Further, South Carolina Rule of Evidence 402 provides that "[e]vidence which is not relevant is not admissible." Therefore, any issues presented in complainant's rebuttal testimony which do not address the issues raised in the instant complaint and are unrelated to service provided by USSC to the complainant are irrelevant to this proceeding and should be ruled inadmissible .

5. Furthermore, the above-referenced portions of rebuttal testimony offered by complainant inappropriately raise new issues that were not raised by witnesses for either USSC or

ORS. “Rebuttal testimony, as its name indicates, is intended to be responsive to issues raised in the direct testimony of the opposing party. It should not be used as a vehicle to raise new issues, unless the party can show good cause why the issues were not raised earlier.” Order No. 1999-714, dated October 11, 1999, Docket No. 1999-268-C, citing Palmetto Alliance v. South Carolina Public Service Comm’n, 282 S.C. 430, 438, 319 S.E.2d 695, 700 (1984) (finding Commission properly limited rebuttal evidence strictly to reply to opposing party’s evidence raised on direct). “The plaintiff in a civil action must first produce and disclose the entire evidence in support of his case; after the defendant has offered all of his evidence, the plaintiff may reply. Reply testimony should be limited to rebuttal matters raised in defense; it should not be used to complete plaintiff’s case in chief.” McGaha v. Mosley, 283 S.C. 268, 276, 322 S.E.2d 461, 466 (Ct.App., 1984) (internal citations omitted).

6. Because complainant’s rebuttal testimony improperly raises new issues which are neither relevant to the complaint nor addressed by opposing parties in their respective direct testimonies, or USSC objects to and moves that the following portions of complainant’s rebuttal testimony be stricken:

Hendrix Rebuttal Testimony:

Page 2, in the section entitled “High Water Pressure”, first unnumbered paragraph beginning with the sentence “Water pressure has been recorded...” and ending with the sentence “...pertaining to high water pressure.”

Page 2, in the section entitled “High Water Pressure”, first unnumbered paragraph beginning with the sentence “Note that we had pressure readings...” and ending with the sentence “...Fischer on July 13, 2009.”

Page 2, in the section entitled “High Water Pressure”, second unnumbered paragraph beginning with the sentence “There are two other facts which make...” through Table 1 on page 5.

Page 5, in the section entitled “Disparity between my Water Bill...”, beginning with the sentence “Allowing a for profit company...” and ending with the sentence “...making a profit – not the consumer.”

Page 6, in the section entitled “Reimbursement for Leaks”, beginning with the sentence “It is a well known fact that...” and ending with the sentence “...and my master bath shower.”

Page 6 through page 7, the testimony contained within the section entitled “Poor Customer Service...”

Page 7, in the section entitled “In Summary”, beginning with sentence “There have been several...” and ending with the sentence “...boil water advisory.”

Plowden Rebuttal Testimony, in its entirety.

Fischer Rebuttal Testimony, in its entirety.

7. USSC further submits that portions of complainant’s prefiled rebuttal testimony should be stricken as impermissible hearsay. Commission Regulation 103-846.A (Supp. 2009) states that in proceedings before the Commission, “[t]he rules of evidence as applied in civil cases in the Court of Common Pleas shall be followed.” South Carolina Rules of Evidence 801(C) defines hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

8. The prefiled rebuttal testimony filed by complainant in this matter contains statements made by persons other than complainant, has been offered to prove the truth of the matter asserted and constitutes inadmissible hearsay. See SCRE, Rule 802. Therefore, USSC respectfully objects to and moves the Commission to strike the following portions of complainant’s prefiled testimony from the record of this case:

Hendrix Rebuttal Testimony:

Page 6, in the section entitled “Poor Customer Service...”, the sentence “Mac said that USSC ...”

Plowden Rebuttal Testimony

Page 1, the second unnumbered paragraph beginning with the sentence “He went under the house...” and ending with the sentence “...including the air conditioner.”

Page 1, the second unnumbered paragraph beginning with the sentence “Mr. Airial came back inside ...” through the third unnumbered paragraph ending with the sentence “...asked me to read the gauge.”

Page 1, the third unnumbered paragraph beginning with the sentence “He stated the water pressure...” through the fourth unnumbered paragraph ending with the sentence “...full of water.”

Page 1, the fourth unnumbered paragraph beginning with the sentence “he waited and watched...” through page 2 ending with the sentence “...verify all water was off.”

Page 2, the first continuing paragraph, the sentence “Mr. Airial asked me to view ...”

Page 2, the first continuing paragraph, beginning with the sentence “Mr. Airial explained this meant...” through the first full unnumbered paragraph ending with the sentence “These lines were repaired.”

Page 2, the second full unnumbered paragraph, beginning with the sentence “My husband visited the Utilities, Inc. office ...” and ending with the sentence “monitored for the next several days.”

Page 2, the second full unnumbered paragraph, beginning with the sentence “He restated to monitor ...” and ending with the sentence “work on my home.”

Wherefore, USSC respectfully requests that the Commission grant the Company’s Motion to Strike as set forth herein and grant such other relief as the Commission deems proper.

[SIGNATURE PAGE FOLLOWS]



John M.S. Hoefer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Defendant/Respondent

Columbia, South Carolina

This 23rd day of July, 2009

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2009-102-W

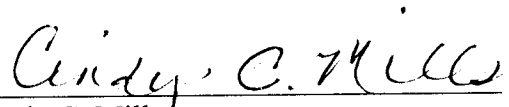
IN RE:)
)
Leslie and Mark Hendrix,)
Complainant/Petitioner)
)
v.)
)
Utilities Services of South Carolina, Inc.,)
Defendant/Respondent)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of **Defendant's Motion to Strike** in the above-referenced action by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Leslie and Mark Hendrix
125 Dutch Point Road
Chapin, SC 29036

Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211



Cindy C. Mills

Columbia, South Carolina
This 23rd day of July, 2009.